

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

WHIDBEY ENVIRONMENTAL ACTION
NETWORK (WEAN),

Petitioner,

v.

ISLAND COUNTY,

Respondent.

Case Nos. 98-2-0023c and 06-2-0012c

**ORDER FINDING CONTINUING
NONCOMPLIANCE
(Case 98-2-0023c)
AND
ORDER OF DISMISSAL
(Case 06-2-0012c)**

The consolidated matters referenced above came before the Board during a conference call on July 16, 2014. David Bricklin and Steve Erickson spoke on behalf of Whidbey Environmental Action Network (WEAN). Daniel Mitchell represented Island County. Also on the call was Brian T. Hodges, representing an intervenor in the proceedings. Present for the Board were members Nina Carter and William Roehl with Roehl presiding.

WEAN was the petitioner in Case No. 98-2-0023c (the "1998 case") and also filed petitions for review challenging two ordinances that were adopted to achieve compliance in the 1998 case. Those PFRs were addressed in Case No. 06-2-0012c (the 2006 case).

The Board's decision in the 1998 case was eventually considered by the Court of Appeals in *WEAN v. Island County*.¹ The Board's decision in the 2006 case was also appealed, resulting in an order issued by the Thurston County Superior Court filed on February 21, 2014.² The compliance legislation challenged in the 2006 case included a clause that provided it would become effective only upon conclusion of any challenges resulting in a final decision in the County's favor. The County did not prevail and

¹ 122 Wn. App. 156, 93 P.3d 885 (2004).

² Thurston County Superior Court Cause No. 06-2-02026-7, *WEAN v. WWGMHB, Island County, Don Olson, Rufus Rose, Island County Property Rights Alliance, Frei Family and Ray Gabelin*.

1 consequently the compliance legislation never took effect. Counsel for WEAN and the
2 County agree that Case No. 06-2-0012c is now moot and should be dismissed. The Board
3 concurs.

4 All but one of the myriad issues raised in the 1998 case have been resolved. In a
5 November 2000 Compliance Hearing Order, the Board determined the County remained
6 noncompliant with the GMA regarding the application of an agricultural exemption from the
7 critical areas ordinance to lands not designated for commercial or rural agriculture. The
8 Court of Appeals concluded the breadth of the critical area exemptions to all rural lands
9 was not supported by the record.³

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11 The parties acknowledge the County remains out of compliance in Case No. 98-2-
12 0023c regarding the breadth or extent of the exemption from the critical areas regulations
13 applicable to rural lands. Again, the Board concurs.
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15 ORDER

16 Based on the foregoing:

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- 18 1. Case No. 06-2-0012c is hereby DISMISSED.
 - 19 2. Island County is found to be in continuing noncompliance in Case No. 98-2-
20 0023c as addressed above and must take legislative action to achieve
21 compliance, all in accordance with the decision of the Court of Appeals in *WEAN*
22 *v. Island County*, 122 WN. App. 156, and the Board's orders, according to the
23 following schedule:
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32 ³ "There is simply no evidence to support the County's assertion that the goal of protecting or preserving agricultural activities on R lands is furthered by the application of the exemption In short, the record does not support the County's contention that such a broad exemption, which includes all R lands, is necessary, or that BAS was considered in creating the exemption." 122 Wn. App. 156, 184.

Item	Date Due
Compliance Due	November 14, 2014
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	November 24, 2014
Objections to a Finding of Compliance	December 8, 2014
Response to Objections	December 18, 2014
Compliance Hearing (Telephonic) Call 1-800-704-9804 and use pin 7757643#	January 8, 2015 10:00 a.m.

Dated this 17th day of July, 2014.

William Roehl, Board Member

Nina Carter, Board Member